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Atlantic Northeast Transport, Inc. and Nooruddin Hanif. Case 22–CA–175081

November 30, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent failed to file an answer to the complaint. Upon a charge filed by Nooruddin Hanif on April 28, 2016, the General Counsel issued a complaint on July 21, 2016, against Atlantic Northeast Transport, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On September 20, 2016, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on September 21, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

On the entire record, the National Labor Relations Board makes the following

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by August 4, 2016, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.¹ Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated August 10, advised the Respondent that unless an answer was received by August 17, 2016, a motion for default judgment would be filed.² No answer or request for an

¹ The complaint was served on the Respondent by certified mail, return receipt requested. On August 31, 2016, the complaint was returned by the Postal Service as “unclaimed.” It is well settled that a respondent’s failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

² The letter was sent by regular mail to the Respondent at its address in Kearny, New Jersey. The letter was not returned. The failure of the Postal Service to return documents served by regular mail indicates

extension of time to file an answer was received by that date.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the General Counsel’s Motion for Default Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Kearny, New Jersey (the facility), has been engaged in the interstate and intrastate transportation of freight.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenue in excess of \$50,000 from the transportation of freight from the State of New Jersey directly to points outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Alfred Kashinsky	President and Chief Executive Officer
Matthew Jenove	Executive Vice President and Operating Officer

At all material times, Nooruddin Hanif and others have been employed by the Respondent as drivers, and have

actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd. sub nom. NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

³ Member Miscimarra concurs with the entry of a default judgment in this case. However, there may be some question regarding whether the Respondent’s correct address (used for purposes of service) is “Kearny, New Jersey” or “South Kearny, New Jersey.” In the instant case, it appears that both addresses result in delivery to the same physical location. Yet, because default judgment cases can give rise to questions regarding whether the proper address was used when serving the complaint or when serving a Notice to Show Cause why a default judgment should not be granted, Member Miscimarra believes the Board should evaluate the development of standards that would foster greater uniformity and certainty regarding the address that will be used for purposes of service.

been employees of the Respondent within the meaning of Section 2(3) of the Act.

About several dates from November 2015 to April 2016, Hanif and other employees of the Respondent concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by questioning Matthew Jenove about increases in certain payroll deductions, including workers' compensation insurance, liability insurance, and cargo insurance.

About March 30, 2016, Hanif engaged in concerted activities with other employees of the Respondent for the purposes of their mutual aid and protection, by filing a complaint against the Respondent with the United States District Court located in Newark, New Jersey, contending, inter alia, that the Respondent had failed to comply with the Truth-in-Leasing Regulations of the Motor Carrier Act, the New Jersey Workers' Compensation Law, the Wage Payment Law, and Common-Law Conversion.

About April 25, 2016, the Respondent, by Matthew Jenove, conditioned Hanif's continued employment on withdrawal of the lawsuit referenced above.

About April 26, 2016, the Respondent terminated Hanif.

The Respondent engaged in the conduct described above because Hanif engaged in concerted activities with other employees for the purposes of mutual aid and protection.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.⁴ The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by discharging Nooruddin Hanif, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any

other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate Hanif for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for Hanif. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate Hanif for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.⁵

Further, the Respondent shall be required to remove from its files any and all references to Hanif's unlawful discharge, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Atlantic Northeast Transport, Inc., Kearny, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees by telling them that their continued employment is conditioned on their ceasing to engage in protected concerted activities, such as filing a lawsuit for the purposes of employees' mutual aid and protection.

(b) Discharging employees because they engage in protected concerted activities, including activities such as filing a lawsuit for the purposes of employees' mutual aid and protection.

⁴ Although the complaint additionally alleged that this conduct violated Sec. 8(a)(3) of the Act, the complaint does not allege sufficient facts to determine whether the conduct violated Sec. 8(a)(3). In any event, we find it unnecessary to decide whether the Respondent's conduct also violated Sec. 8(a)(3), because finding this additional violation would not materially affect the remedy.

⁵ For the reasons stated in his separate opinion in *King Soopers*, 364 NLRB No. 93, slip op. at 9–16, Member Miscimarra would adhere to the Board's former approach, treating search-for-work and interim employment expenses as an offset against interim earnings.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Nooruddin Hanif full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Nooruddin Hanif whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharge of Nooruddin Hanif, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Compensate Nooruddin Hanif for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Kearny, New Jersey, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent custom-

arily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 25, 2016.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 30, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

Notice To Employees

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you by telling you that your continued employment is conditioned on your ceasing to engage in protected concerted activities, such as filing a

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

lawsuit for the purposes of employees' mutual aid and protection.

WE WILL NOT discharge you because you have engaged in protected concerted activities, such as filing a lawsuit for the purposes of employees' mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of this Order, offer Nooruddin Hanif full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Nooruddin Hanif whole for any loss of earnings and other benefits resulting from our unlawful conduct, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharge of Nooruddin Hanif, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL compensate Nooruddin Hanif for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 22, within 21 days from the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

ATLANTIC NORTHEAST TRANSPORT, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-175081 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

